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# Letter dated 17 March 2008 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Niger submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Neven **Jurica**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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## Annex

### Note verbale dated 10 March 2008 from the Permanent Mission of Niger to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: French]

The Permanent Mission of the Niger to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to transmit herewith the 2007 report on the measures taken by the Niger to combat terrorism.

**Attachment**

## 2007 National Report of the Niger to the Counter-Terrorism Committee

Recognizing that acts of terrorism constitute a threat to international peace and security, the international community called upon States, pursuant to United Nations Security Council resolution 1373 (2001) of 28 September 2001 and other universal counter-terrorism instruments, to become parties to and ratify these instruments and take the additional measures required to prevent and suppress, in their territory through all lawful means, the financing and preparation of any acts of terrorism, prevent the movement of terrorists by effective border controls and controls on the issuance of identity papers and travel documents. These instruments require States to find ways of intensifying and accelerating the exchange of operational information, exchange information in accordance with international and domestic law and cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts. They also urge them to increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001).

The Government of Niger, a State Member of the United Nations that attaches importance to compliance with international law, has taken a number of measures to meet these requirements, including the following:

- Accession to and ratification of the universal counter-terrorism instruments;
- Incorporation of these instruments into domestic legislation;
- Incorporation of the provisions of resolution 1373 (2001);
- Establishment of bodies responsible for following up on the implementation of the decisions taken;
- Development of bilateral and multilateral agreements.

# I. Accession and ratification measures

According to the most recent update of the status of ratification, 10 of the 16 universal counter-terrorism instruments have been ratified by the Niger.

**The following table lists the universal instruments ratified by the Niger.**

| *No.* | *Instrument* | *Act* | *Issuing Decree* | *Instrument of Ratification* | *Remark* |
|---|---|---|---|---|---|
| 1. | Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 | No. 71-03 of 29 November 1971 | | | |
| 2. | Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 | No. 71-30 of 6 September 1971 | No. 76-195/ PCMS/MAE/C of 20 November 1976 | | |

| *No.* | *Instrument* | *Act* | *Issuing Decree* | *Instrument of Ratification* | *Remark* |
|---|---|---|---|---|---|
| 3. | Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 | No. 72-9 of 5 April 1972 | | Signed on 6 March 1972 and ratified on 1 September 1972 | |
| 4. | Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted on 14 December 1973 | Order No. 85-10 of 13 May 1985 | No. 85-61/PCMS/ MAE/C of 5 June 1985 | Signed on 14 December 1973 and ratified on 17 June 1985 | |
| 5. | International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 | No. 2003-044 of 17 November 2003 | | Lettre/R No. 0036/ PRM of 14 September 2004 | BE No. 105/MAE/C/ DAJC Mult 1 of 28 September 2004 addressed to the Permanent Mission of Niger |
| 6. | Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 | No. 2004-09 of 2 January 2004 | No. 2004-243/ PRM/MAE/C of 13 September 2004 | Lettre/R No. 0029/ PRM of 29 July 2004 | BE No. 91/MAE/C/ DAJC Mult of 27 August 2004 addressed to the Permanent Mission of Niger |
| 7. | Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 | No. 2004-43 of 17 November 2003 | | Lettre/R No. 0045/ PRN of 14 September 2004 | BE No. 102/MAE/C/ DAJC Mult 1 of 28 September 2004 addressed to the Permanent Mission of Niger |
| 8. | Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 | No. 2003-042 of 17 November 2003 | | Lettre/R No. 0038/ PRN of 14 September 2004 | BE No. 103/MAE/C/ DAJC Mult 1 of 28 September 2004 addressed to the Permanent Mission of Niger |
| 9. | Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 | No. 2004-35 of 2 June 2004 | Decree No. 2004-28/PRN/MAE/C of 13 September 2004 | Lettre/R No. 0030/ PRN of 29 July 2004 | BE No. 00092/MAE/ C/DAJC Mult 1 of 27 August 2004 addressed to the Permanent Mission of Niger |
| 10. | International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 | No. 2003-040 of 7 November 2003 | | Lettre/R No. 0040/ PRN of 14 September 2004 | BE No. 104 MAE/C/ DAJC Mult 1 of 28 September 2004 addressed to the Permanent Mission of Niger |

| No. | Instrument | Act | Issuing Decree | Instrument of Ratification | Remark |
|---|---|---|---|---|---|
| 11. | International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 | No. 2003-041 of 17 November 2003 | Decree No. 2004-250/PRN/MAE/C of 13 September 2004 | Lettre/R No. 0035/PRN of 27 August 2004 | BE No. 006316/MAE/C/DAJC Mult 1 of 10 September 2004 addressed to the Secretary-General of the United Nations |
| 12. | Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 | No. 2004-023 of 2 June 2001 | | Letter/R No. 0028/PRN of 28 July 2004 | BE No. 0561/MAE/C/DAJC Mult 1 of 18 August 2004 transmitted to the IAEA Director General |

It should be noted that two of the instruments of ratification, Nos. 8 and 9, were deposited with the Secretary-General of the United Nations rather than with the secretariat of the International Civil Aviation Organization (ICAO), the Russian Federation or the United Kingdom of Great Britain and Northern Ireland.

The Government of the Republic of the Niger is making every effort to deposit instruments of ratification under the appropriate procedure in order to register them.

Furthermore, the Government passed a bill on 31 January 2008 on the ratification of the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005.

This bill will be submitted to the National Assembly for adoption.

To date, of the 16 universal instruments only 3 are yet to be ratified or adopted by the Niger. They are:

- Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on 8 July 2005;
- Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at London on 14 October 2005;
- Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005.

## II. Legislative measures taken by the Niger

Act No. 61-27 of 16 July 1961 on the Penal Code of the Niger, as amended and supplemented by Act No. 2003-25 of 13 June 2003, includes several provisions which penalize offences against the person and offences against property. Examples of the provisions include:

Articles 222 et seq. of the Criminal Code criminalize all acts of violence in general. These provisions are consistent with articles 1 (a) and 1 bis of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal 1971) and the Protocol for the Suppression of Unlawful Acts of

Violence at Airports Serving International Civil Aviation, Supplementary to the Convention.

The offences contemplated in articles 1 (b), 1 (c), 1 (d) and 1 bis (b) of the aforementioned Convention are partially criminalized under articles 378, 379, 380, 384 and 385 of the Penal Code.

The legislation of the Niger is consistent with the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970).

Article 1 of the Convention has been incorporated into article 399-1 of the Penal Code, which was amended in 2003 (Act No. 2003-26 of 13 June 2003).

Under article 399-1, "any person who, by force or threat thereof, seizes or exercises control of an aircraft shall be liable to 10 to 20 years' imprisonment.

If these acts cause injury or illness the penalty shall be 20 to 30 years' imprisonment.

If these acts cause the death of one or more persons, the death penalty shall be imposed.

In the case provided for under paragraph 1, the penalty shall be reduced to a term of 5 to no more than 10 years' imprisonment if the offender spontaneously restores control of the aircraft to its captain or to the legitimate authorities".

Articles 265, 266 et seq., which punish offences against individual freedom (arbitrary arrests or unlawful detention), are also consistent with the International Convention against the Taking of Hostages (December 1979). (See also articles 2, 48, 49 and 208 of the Penal Code.)

With the ratification of the 12 universal counter-terrorism instruments, the Niger has carried out extensive reforms to incorporate such instruments into its domestic legislation.

The reforms concern the following areas:

## A. The Penal Code

In addition to the reforms introduced in 2003 (Act No. 2003-25 of 13 June 2003 amending Act No. 61-27 of 16 July 1961 on the Penal Code), the Council of Ministers passed a bill amending the Penal Code on 17 January 2008. The bill also incorporates the universal instruments adopted in 2005 which have not yet been ratified by the Niger.

The bill is designed to ensure that international counter-terrorism instruments can be applied to the Niger.

The following acts will henceforth be criminalized:

- Offences against the safety of civil aviation and road and inland water transport;
- Offences against the safety of ships and fixed platforms. The perpetration of an act of violence against a person on board a ship or fixed platform if that act is likely to endanger the safe navigation of such ship or the safety of such platform and the destruction of a ship or fixed platform or causing damage to ships or platforms shall be punishable under criminal law, as shall be:

- Hostage-taking;
- Offences against internationally protected persons;
- Terrorist bombings;
- Possession of radioactive materials, the manufacture or possession of a device with the intent to cause the death or serous bodily injury of a person or with the intent to cause damage to property or the environment.

The use in any way of radioactive material or a device shall constitute an act of nuclear terrorism punishable under criminal law.

The bill also covers the financing of terrorism. The provision or raising of funds, directly or indirectly, unlawfully and wilfully, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts is be punishable under the bill. The offence is consummated even if the funds that were raised were not actually used in the commission thereof.

The recruitment of a person for the purpose of committing or participating in the commission of one or more offences provided for by this bill is also punishable.

With respect to the statute of limitations, the bill would establish a special regime. Under article 399-22, the statute of limitations shall be 10 years for misdemeanours and 20 years for felonies.

All misdemeanours fall under the jurisdiction of the Niamey Court of Major Jurisdiction and felonies under the jurisdiction of the Niamey Assize Court.

There also shall be instituted a special regime for police custody of 72 hours, which may be extended only once.

## B. Code of Criminal Procedure

Under the amendments introduced in 2003 and 2004 (Acts No. 2003-026 of 13 June 2003 and No. 2004-21 of 16 May 2004 amending Act No. 61-33 of 14 August 1961 on the Code of Criminal Procedure) and existing provisions, the intent of Parliament was to extend the jurisdiction of the courts to include offences and misdemeanours committed abroad in compliance with the principle of "extradite or prosecute" (articles 642, 642-1, 643, 647 and 648). Thus, with the implementation of this principle, no offence shall lie beyond the jurisdiction of the courts of the Niger.

### Jurisdiction of the Courts of the Niger

### Acts Committed in the Niger

Under articles 42, 47, 363 and 646 of the Code of Criminal Procedure, the courts of the Niger have jurisdiction over all offences committed in the Niger or cases in which one of the elements of the offence was committed in the Niger.

**Acts Committed Abroad**

• **By a National of the Niger**

Under article 642 of the Code of Criminal Procedure, courts of the Niger have jurisdiction over the crimes and offences committed abroad by a Niger national provided that such offences are punishable under the laws of the country where they were committed.

• **By a Foreign National**

Under article 642-1 of the Code of Criminal Procedure, courts of the Niger have jurisdiction over offences committed outside the Niger by foreign nationals when the victim is a citizen of the Niger.

The following measures have been taken with respect to resolution 1373 (2001):

Act No. 2006-17 of 21 June 2006 on nuclear safety and security and protection against ionizing radiation.

## C. Resolution 1373 (2001)

**Paragraph 1**

(a) In addition to the ratification by the Niger of the International Convention for the Suppression of the Financing of Terrorism, the Council of Ministers adopted on 17 January 2008 a bill amending and supplementing the Penal Code, article 399-17 of which makes the financing of terrorism a crime.

(b) Under article 399-12 of this bill, any person who, by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorist act shall be liable to 15 to 30 years' imprisonment.

(c) The foregoing article provides for the confiscation of the funds collected; article 399-26, provides for the freezing of assets and funds.

**Paragraph 2**

(a) and (b) The Niger ratified the International Convention for the Suppression of the Financing of Terrorism, which prohibits signatory States from providing any form of support to entities or persons implicated in terrorist acts.

(c) Under article 3 of Act No. 97-016 of 20 June 1997 on the status of refugees, refugee status is not granted to any person who has committed a crime against peace or any non-political crime outside the country of refuge prior to his or her admission as a refugee or who has been found guilty of acts inconsistent with the purposes and principles of the United Nations.

(d) and (e) Acts of terrorism and their financing are punishable under the bill.

(f) In addition to the International Convention for the Suppression of the Financing of Terrorism, articles 12, 13, 14 and 15 of which deal with mutual legal assistance, the Niger has also signed related bilateral and multilateral conventions (see the list below).

## 8. List of Conventions and Agreements on Judicial Cooperation

1. Agreement on Judicial Cooperation between the Republic of the Niger and the People's Democratic Republic of Algeria (Niamey, 12 April 1984).

2. Convention on cooperation in judicial matters between the Republic of the Niger and the French Republic (Niamey, 22 April 1960).

3. General Convention on Cooperation in Judicial Matters between the Niger and Mali (Niamey, 22 April 1960).

4. Agreement on Judicial Cooperation between the Government of the Republic of the Niger and the Federal Military Government of Nigeria, signed at Maiduguri on 18 July 1990.

5. Convention on Mutual Assistance in Criminal Matters among the signatories to the Agreement on Non-Aggression and Assistance in Matters of Defence (ANAD), signed at Nouakchott on 21 April 1987.

6. Economic Community of West African States (ECOWAS) Convention A/PI/8/94 on Extradition, signed on 6 August 1994 at Abuja.

7. ECOWAS Convention A/PI/7/92 on Mutual Assistance in Criminal Matters, adopted at Dakar on 29 July 1992.

8. Convention on Cooperation and Mutual Assistance in Matters relating to Justice between the States Members of the Council of the Entente, signed at Yamoussoukro on 20 February 1997.

9. Treaty on conciliation, judicial settlement and arbitration between the Niger and the Swiss Confederation, signed on 2 August 1963.

10. Agreement on cooperation in criminal police matters between the States members of the Economic Community of West African States (ECOWAS).

11. Agreement on Judicial Cooperation between the Supreme People's Procuratorate of the People's Republic of China and the Ministry of Justice and Human Rights of the Republic of the Niger, signed on 30 August 2001.

12. Convention on Security Matters between the States Members of the Community of Sahelo-Saharan States (CEN-SAD), adopted on 15 May 2004 at Bamako and ratified pursuant to Act No. 2007-17 of 21 June 2007.

**List of pending bilateral and multilateral conventions**

- Draft convention between the Republic of the Niger and the Kingdom of Morocco concerning mutual judicial assistance in civil and commercial matters.
- Draft convention on combating the illicit traffic in narcotic drugs and psychotropic substances between the States members of the Community of Sahelo-Saharan States (CEN-SAD).
- Draft convention on mutual judicial assistance between the States members of the Community of Sahelo-Saharan States (CEN-SAD).
- Convention on mutual assistance in criminal matters and extradition between the Libyan Arab Jamahiriya and the Republic of the Niger.

(g) Article 399-25 of the Penal Code stipulates that searches may be carried out at any time and place in order to detect terrorism-related offences.

**Paragraph 3**

(a) Information is exchanged through the International Criminal Police Organization (INTERPOL), of which the Niger is a member.

(b) Intelligence is shared through INTERPOL and the relevant mechanisms agreed under multilateral and bilateral conventions on mutual legal assistance.

(c) The Niger, as indicated above, has signed several agreements on cooperation and mutual legal assistance.

(d) As stated in paragraphs 1 (a), 2 (a), (b) and (f), the Niger is a party to the International Convention for the Suppression of the Financing of Terrorism, ratified on 17 November 2003.

(e) In addition to international conventions, agreements on cooperation and mutual legal assistance and existing international protocols relating to terrorism ratified by the Niger, other agreements and conventions are in the process of being completed or ratified (see paragraph 2 (f)).

(f) Act No. 97-016 of 20 June 1997 on the status of refugees does not grant refugee status to anyone who has committed any of the following offences:

(1) A crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(2) Acts contrary to the purposes and principles of the United Nations. This Act also withdraws the refugee status from all persons in the following situations:

- If the person committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- If the person is found to be a threat to public order in the country of refuge.

(g) The International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, which were ratified by the Niger on 17 November 2003, prohibit any Member State from recognizing claims of political motivation as grounds for refusing requests for the extradition of alleged terrorists.

**Combating money-laundering**

The Niger now has comprehensive legislation in this area.

The Niger enacted pursuant to West African Economic and Monetary Union (WAEMU) Directive No. 07-2002/CM/UEMOA of 19 September 2002 on combating money-laundering in WAEMU member States, especially articles 36, 37, 39, 40, 41, 42 and 43, Act No. 2004-41 on combating money-laundering on 8 June 2004.

The objective and scope of this Act make it an effective tool for preventing and suppressing various forms of money-laundering.

The purpose of the Act is to establish the legal framework for money-laundering with a view to preventing the recycling of proceeds or all other assets of illicit origin through the economic, financial and banking channels of the Union.

With regard to its scope of application, the new Act applies to both natural persons and public- or private-law corporations (the central bank, travel agencies, non-governmental organizations, the treasury, and independent legal professionals when they represent or assist clients outside of normal legal procedures) who in the practice of their profession conduct, monitor or provide advice about transactions involving deposits, currency exchange, investments, conversions or any other movement of funds or assets.

The new Act places on such corporations, especially financial institutions, a special duty to know their clients and a duty to monitor certain operations, maintain and report on documents. They are also required to submit suspicious transaction reports.

Pursuant to article 16 of the above-mentioned Act, Decree No. 2004-262/PRN/ME/F on the establishment, structure and functions of the National Financial Information Processing Unit (CENTIF) was adopted on 14 September 2004.

Article 17 of the Act defines CENTIF as "an administrative agency with financial autonomy and autonomous decision-making authority on matters falling within its competence".

The Unit is responsible for receiving, analysing and processing information to determine the origin of transactions or the nature of operations reported as suspicious by the persons subject to the Act (natural or legal persons).

Upon its request, the relevant entities, namely, banks, financial institutions, non-governmental organizations, savings and loan institutions, financial services, postal services and, insurance companies, are required to transmit any information in their possession that may allow the Unit to detect illicit capital movements.

In addition to this Act, by Instruction No. 01-2007/RB of 2 July 2007 the Governor of the Central Bank of West African States (BCEAO) has set forth modalities for the implementation of the above-mentioned WAEMU Directive.

The Instruction imposes a number of obligations on banks, both general obligations of due diligence and specific obligations of heightened vigilance.

**Other draft laws related to the financing of terrorism**

These include:

- The draft framework law on the financing of terrorism in ECOWAS member States, adopted by member States in June 2007 at Banjul (Gambia);
- Directive No. 04-2007/CM/UEMOA of 4 July 2007 on combating the financing of terrorism in WAEMU member States issued by the WAEMU Commission with a view to each country implementing this Directive within its domestic legislation on the financing of terrorism.

In accordance with article 27 on incorporation into domestic legislation, member States must, within six months of signature of the Directive, incorporate

uniform texts on combating the financing of terrorism into their domestic legislation.

**Freezing of funds, assets and other financial resources in accordance with paragraph 1 (c) of Security Council resolution 1373 of 28 September 2001**

In addition to already existing provisions on the freezing of funds, article 28, subparagraph 2, of Act No. 2004-41 of 8 June 2001 on combating money-laundering provides that "CENTIF may, in exceptional cases on the basis of serious, consistent and reliable information in its possession, block any transaction before expiry of the time limit for its execution specified by the originator of the report. The latter shall be notified in writing of the blocking measure, which shall remain in effect for a period that may not exceed 48 hours".

Article 399-26 of the aforementioned draft law provides for the freezing of assets, funds, valuables and property as soon as the freeze procedure is initiated.

The framework law on combating the financing of terrorism, which will be incorporated into the national legislation of States upon approval by the Head of State or Government, has an entire chapter on the freezing of funds.

Under article 10-1 of the aforementioned draft law, the competent authority shall by administrative decision freeze funds or other assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds or other assets derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.

Subparagraph 2 provides that the freezing of assets must occur without delay and without prior notification of the persons concerned.

Subparagraph 3 provides for the freezing by administrative decision of the competent authority of funds or other assets of persons listed by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities.

Other provisions deal with dispute procedures, administrative measures and sanctions in the event of non-compliance.

The twenty-ninth session of the Summit of Heads of State and Government of ECOWAS held on 12 January 2006 at Niamey took a decision amending the regulations of the Intergovernmental Action Group against Money-laundering (GIABA) to expand its mandate to include combating terrorism. Discussions on possible amendments to the framework law were held in Niamey in November 2006. The Niger will take such measures as may be necessary to incorporate the provisions of the framework law in its domestic legislation.

Article 21 of Directive No. 04-2007/CM/UEMOA on combating the financing of terrorism in WAEMU member States requires member States to take the necessary measures to freeze the funds and other financial resources of terrorists and all those who finance terrorism and terrorist organizations.

It also provides that member States must ensure that they adopt legislation on the freezing of funds, including Regulation No. 14-2002/CM/UEMOA of 19 September 2002 on the freezing of funds and other financial resources in the context of combating the financing of terrorism in WAEMU member States, as well as decisions with respect to the persons on the assets freeze list.

In addition, the Niger intends to adopt measures to prohibit any persons from making any funds, financial assets or economic resources available for the benefit of the persons mentioned in paragraph 1 (d).

**Weapons (paragraph 2 (a) of the resolution)**

The ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition, and Other Related Materials, the Penal Code of the Niger (Act No. 2003-25 of 13 June 2003), and Decree No. 63-074/MJ of 23 April 1963 and Decree No. 84-185/PRN, supplemented by Decree No. 99-417/CAB/PRN of 20 December 1999, constitute the legal framework for combating arms trafficking in the Niger.

Thus far, the Niger is the only country to have ratified the above-mentioned ECOWAS Convention. This Convention contains provisions on the transfer of weapons (chapter 2), transparency and exchange of information among States (chapter 4), and operational mechanisms, including control of possession, as well as certification, marking, collection and destruction of such weapons (chapter 5). Provision is also made for the harmonization of legislative provisions on weapons among ECOWAS member States.

At the legislative level, articles 299 and 300 of the penal code deal with arms.

Under article 299, the import, sale, transport, possession and bearing of firearms or air guns, any type of bullets, cartridges or powder, as well as of any explosives, is prohibited throughout the country.

Any person who imports, sells, transfers, transports, possesses or bears the weapons, explosives or munitions listed above in the territory of the Republic of the Niger shall be liable to 2 to 10 years imprisonment, and a fine of 20,000 to 200,000 CFA francs.

Any weapons, explosives and munitions involved in the violation are also confiscated under that article. Attempts to commit an offence carry the same punishment as the commission of the offence itself.

The manufacture, without authorization from the national explosives authority, of explosives, advanced firearms, firearms intended for trafficking, or spare parts or munitions for such weapons is punishable under article 300. It envisages the same penalties as those provided for under the preceding article, as well as the confiscation of the explosives, weapons, parts and ammunition that are the object of the offence.

All these provisions make the illegal possession and use of such weapons an offence.

At the institutional and regulatory level, a national commission responsible for the collection and monitoring of illicit weapons was established by Decree No. 99/417/CAB/PRN of 20 December 1999. A pilot project has been established in

the department of N'guigmi to collect illicit arms and support sustainable development.

In addition to articles 642, 642-1, 643 and 647 of the Code of Criminal Procedure, which establish the "extradite or prosecute" principle, article 46 of Act No. 2004-41 of 8 June 2004 on money-laundering provides that "national courts have jurisdiction over offences under the present Act, whether committed by natural or legal persons, regardless of their nationality or location of their principal place of business, even outside national territory, if the act was committed in one of the WAEMU member States".

They may also assert jurisdiction over these offences when they are committed in a State if there is an international treaty granting them such jurisdiction.

Under article 116 of Order No. 99-42 of 23 September 1999 on combating drugs in the Niger, courts of the Niger have jurisdiction in cases where:

- The offence or one of the elements of the offence is committed on its territory.
- The offence is committed by one of its nationals or by a person whose habitual residence is in its territory.
- The perpetrator is present in its territory and has not been extradited.
- Finally, the offence is committed on board a vessel that the flag State has authorized to inspect and board and, in the event that evidence of involvement in illegal trafficking is found, to take appropriate action with respect to the vessel, the persons on board and the cargo.

The framework law on combating the financing of terrorism in ECOWAS member States grants such jurisdiction to national courts (part V, article 13).

With regard to provisions on the regulation of informal banking networks, the same law devotes an entire section to cash couriers (articles 54, 54-1, 54-2, 54-3).

In particular, it requires that the physical cross-border transport of cash or bearer-negotiable instruments at both entry and exit points must be monitored through the implementation of realistic measures mandated by the State, in order to prevent them from being used to finance terrorism.

In addition, article 17 of Directive No. 04-2007/CM/UEMOA on combating the financing of terrorism in WAEMU member States, provides that member States must take measures to detect physical cross-border transport of cash or bearer-negotiable instruments, in particular by putting in place a reporting system or any other relevant disclosure obligations.

They must ensure that effective, proportionate and deterrent sanctions are applied to persons who make false declarations or disclosures.

## B. Drugs

In addition to the information in our previous report, Order No. 99-42 of 23 September 1999 on the drug code includes relevant provisions worth highlighting in this report. It is much more rigorous, as indicated by article 102, under which the incitement to use illicit drugs or to commit any of the offences envisaged in articles 94 to 101 carries a penalty of life imprisonment, even if the offence is not consummated.

It also addresses various international concerns, including those relating to money-laundering and the use of controlled delivery to detect money-laundering. It also contains provisions on surveillance and wiretaps, access to information systems, the monitoring of bank accounts and the production of banking, financial and trade documents.

Under article 101, a penalty of 10 to 20 years imprisonment and/or a fine of 50 million CFA francs is imposed on:

- Persons who aid and abet the conversion or transfer of assets or property derived from the offences provided for in articles 94 to 100 for the purpose of concealing or disguising the illicit source of such property or assets, or of helping any person who is involved in the commission of any of those offences to evade the legal consequences of his or her action;
- Persons who aid and abet in the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to such assets or property deriving from the above-listed offences.

Article 116 provides that the courts of the Niger have jurisdiction over offences provided for in section V of the present chapter when:

- The offence or one of the elements of the offence is committed on its territory;
- The offence is committed by one of its nationals or by a person whose habitual residence is in the Niger;
- The perpetrator is present in its territory and has not been extradited;
- The offence is committed on board a vessel that the flag State has authorized to inspect and board and, in the event that evidence of involvement in illegal trafficking is found, to take appropriate action with respect to the vessel, the persons on board and the cargo.

**Provisions designed to facilitate investigations (articles 118 and 119)**

Article 118 deals with special provisions on pretrial detention.

Article 119 deals with searches: searches may be conducted at any hour of the day or night anywhere high-risk drugs, dangerous drugs, precursors, or equipment or material designed for the illegal cultivation, production or manufacture of said drugs are illegally manufactured, processed or stored, or in places where high-risk drugs are used socially.

Law enforcement officials are authorized to monitor postal services to detect illicit drug shipments (article 120). Articles 122 and 123 of the Order deal with controlled delivery.

Law enforcement officials may place under surveillance or subject to wiretapping any persons suspected of involvement in the offences covered by the Order (article 125).

Articles 126, 127, 128 and 129 provide, respectively, for access to information systems, monitoring of bank accounts, the production of banking, financial and trade documents and measures to assist the detection of money-laundering.

## C. Trafficking in persons, especially women and children

The Niger, having ratified the United Nations Convention against Transnational Organized Crime and its additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, has drafted a bill to incorporate these two instruments into its national legal system. It would:

- Prevent and combat trafficking in persons, especially women and children;
- Protect, support and assist victims of such trafficking while respecting their fundamental rights;
- Punish traffickers for any human trafficking-related offences;
- Facilitate cooperation among States parties to the Convention.

This bill has been submitted to the Secretary-General of the Government for adoption by the Council of Ministers.

Furthermore, there are plans to establish a national commission against trafficking in persons and a national agency to combat trafficking in persons, each of which is responsible for adopting and implementing within their respective areas of competence policies and programmes against human trafficking.

## D. Right of asylum

In the Niger the right of asylum is governed by Act No. 97-016 of 20 June 1997 and Decree No. 98-382/PRN/MI/A of 24 December 1998 on implementing regulations for that Act.

The Act is aimed at controlling and preventing unauthorized entry into the country.

Thus, under article 3 of this Act, refugee status shall not apply to any person falling under the following exclusion clauses:

1. He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

2. He has committed a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee;

3. He has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;

4. He has been guilty of acts contrary to the purposes and principles of the United Nations.

Furthermore, there is a national committee responsible for granting, cancelling or withdrawing refugee status, the National Committee on Eligibility for Refugee Status, on which a representative of the High Commissioner for Refugees sits as an observer.

The decisions of the Committee may be appealed to the Minister of the Interior without prejudice to other appeals proceedings before the competent courts.

This provision ensures that paragraph 3 (f) of resolution 1373 (2001) as well as resolution 1269 (1999) are taken into account by the law of the Niger.

Under the law of the Niger background checks must be conducted on asylum-seekers to ensure that none of the cases envisaged under article 3 applies to them before they are granted refugee status. The refugee status provided for in this Act shall cease to be applied if the beneficiary has committed a serious non-political crime outside the country of refuge (article 4, paragraph 5) or if he is found guilty of breach of the peace and national security (article 4, paragraph 8) or if he carries out subversive activities directed against another member State (article 4, paragraph 9).

Applicants and beneficiaries may also be expelled, returned or extradited from the territory of the Niger on grounds of national security or public order.

However, expulsion cannot be ordered, except where considerations of national security and public order are involved, until an opinion has been obtained from the National Committee on Eligibility for Refugee Status.

## E. Extradition

In general, extradition is governed by bilateral or multilateral treaties to which the Niger is a party.

However, there is domestic legislation on the issue:

– Act No. 61-33 of 14 August 1961 on the Code of Criminal Procedure, as amended by Act No. 2003-026 of 13 June 2003 and Act No. 2004-21 of 16 May 2004, article 647, which lays down the principle of extradition.

It provides that "any alien who, outside the territory of the Republic of the Niger, whether as a principal offender or an accomplice, commits any offence that undermines the State security, forges the State seal or counterfeits the national legal tender, may be prosecuted and brought to trial in accordance with the laws of the Niger if he is arrested in the Niger or whether the Government obtains his extradition".

However, neither the procedure to be followed nor the conditions in which extradition may be refused have been specified by this Code.

– Act No. 2004-41 of 8 June 2004 on combating money-laundering:

This Act devotes seven articles to extradition, to wit:

- Article 71 on the conditions for extradition;
- Article 72 on summary proceedings;
- Article 73 on supplementary information;
- Article 74 on provisional arrest;
- Article 75 on the handing over of property;
- Lastly, article 116, paragraph 1, subparagraph 3, of Order No. 99-42 of 23 September 1999 on combating drugs in the Niger, which also deals with extradition.

Furthermore, the draft framework law on the financing of terrorism in States members of the Economic Community of West African States (ECOWAS) contains substantial provisions on extradition as called for by the international community.

Such provisions include requests for extradition, safety measures, double jeopardy, mandatory grounds for refusing to extradite, optional grounds for refusing to extradite, transmission of applications, content of applications, processing of applications, supplementary information, requests for confidentiality, the refusal of enforcement, summary proceedings, prohibition against the use of evidence for wrongful purposes and charges for expenses.

However, there are no legal time frame deadlines for compliance with a request for judicial assistance or extradition.

However, the ECOWAS Convention on Mutual Assistance in Legal Matters provides that:

- The requesting member State shall indicate the deadline within which it wishes to have its request complied with (article 5 (1) (f));
- The requested member State has an obligation to execute the request for mutual assistance expeditiously (article 6 (1));
- Upon the request of the requesting State, the requested State may inform the requesting State of the date and place for execution of the request so that its officials may be present (article 6 (1));
- A request by a member State seeking the appearance of a person in court shall be transmitted to the requested State at least 60 days prior to such appearance;
- Where a person has been placed under provisional arrest, the failure by a requesting State to transmit to the requested State the request for extradition and the documents mentioned in article 18 within 20 days of the individual being placed under provisional arrest, the individual shall be released.

## F. Legislation on the entry and stay of aliens

The entry and stay of aliens in the Niger are governed by Order No. 81-40 of 29 October 1981 on the entry and stay of aliens in the Niger and Decree No. 87-076/PCMS/MI/MAE/C of 18 June 1987 on the requirements for entry and stay of aliens in the Niger.

These two pieces of legislation set forth the conditions for the entry residence of aliens, the conditions of their refoulement and expulsion and the penalties they face in case of violation.

## G. Charities

The legislative framework comprises:

- Order No. 84-06 of 1 March 1984 establishing the regulations governing associations, as amended successively by Order No. 84-50 of 5 November 1984 and Act No. 91-006 of 20 May 1991;
- Decree No. 92-252/PM/MF/P of 25 September 1992 on the procedures for the application of Order No. 84-06 of 1 March 1984;
- Circular of 24 November 1995 on the draft model agreement between a non-governmental organization and the Government of the Republic of the Niger.

Such legislation, enacted in 1984, did not address the issue of the financing of terrorism.

A bill on the regulations governing associations and non-governmental organizations has just been drafted.

The bill partially complies with the Niger's obligations under resolution 1373 (2001).

The following measures have been built into the bill to prevent funds received by charitable organizations from being diverted for other purposes, including the financing of terrorism and other criminal activities:

Such organizations are required to:

- Declare their external sources of financing and transactions covered by such financing to the administrative authorities of the head office within 30 days (article 14);
- Declare requests for financing;
- File copies of the financing agreement with the administrative authorities of the head office;
- Allow the State to verify whenever necessary how those funds are used (article 14);
- Inform the administrative authority which has received the founding statement of any changes in the administration or management and any amendments to the statutes (article 8);
- Enter the amendments made in a special register kept at the head office of the association and submit such register to the administrative or judicial authorities whenever they so request.

It should be noted, however, that this bill has some shortcomings.

Indeed, it does not address registration procedures, mandatory disclosures, donations, accounting and bank accounts.

However, those issues will be covered with the incorporation into national legislation of the ECOWAS draft framework law relating to the suppression of the financing of terrorism in member States.

## H. Combating illegal migration

Owing to its location in the heart of the continent, the Niger, a Sahelo-Saharan country with a border extending more than 5,500 km and a total surface area of 1,267,000 sq. km, is exposed to considerable migration flows.

Because of its porous borders and inadequate response capacity, the Niger has become a hub for drug traffickers, armed robbers and illegal migrants from other African countries and even from Asia and the Middle East.

To combat this scourge and enhance border control, the Niger is involved in the European Union-funded "Across Sahara" project, which specifically seeks to promote the development of appropriate policies and actions to prevent and combat illegal migration, trafficking in persons and smuggling.

Under this project, police officers have been trained in the area of border management, migration, points of contact and patrols.

The Niger and Nigeria have signed a similar agreement to combat crime and illegal migration.

The National Police department plans to establish a counter-terrorist unit. Under that plan, police officers and officers of the National Forces for Intervention and Security have already received training in the United States of America and Egypt.

## I. Types of travel documents issued in the Niger

The Niger issues three main types of travel documents — the ECOWAS passport and travel certificate and the national identity card.

Within the framework of ECOWAS, a secure, machine-readable, standardized travel document known as the "ECOWAS passport" has been established.

There are three types of passports: regular, official and diplomatic passports.

The travel certificate is issued by the police precinct of the applicant's place of residence. It is valid for only two years and may be renewed only once. It is only valid for travel to States members of ECOWAS and is not secured.

The national identity card, which has been mandatory since 1964, is issued to any national of the Niger upon request; it is not secured.

The misuse and forgery of travel documents is punishable under articles 152 et seq. of the Penal Code.

## V. Institutional framework

The following bodies have been set up to ensure that the agreements entered into by the Niger and the relevant national legislation are effectively implemented:

- The National Committee on Terrorism established pursuant to United Nations Security Council resolution 1373 (2001) of 28 September 2001, which was adopted by the Council acting under Chapter VII of the Charter; we have elaborated thereon in our previous report (see S/2004/374);
- The National Financial Information Processing Unit (CENTIF), established pursuant to Decree No. 2004-262/PRN/ME/F of 14 September 2004, in accordance with article 16 of Act No. 2004-41 of 8 June 2004 on combating money-laundering (see above);
- The national commission responsible for drafting anti-corruption strategies established pursuant to Decree No. 2005-106/PRN/PM of 22 April 2005 amending and supplementing Decree No. 2003-256/PRN of 17 October 2003. This commission is composed of members from various sectors (State institutions and civil society). It is responsible for reviewing corruption in the Niger, crafting strategies to combat it, developing a programme of action and putting forward suggestions and recommendations to the Government in the area of combating corruption.

**National poverty reduction strategy**

Aware that combating corruption, terrorism and other forms of national and transnational organized crime depends on the level of development and, in view of the level of poverty of the vast majority of the population, the Government of the Republic of the Niger has developed a poverty reduction strategy under the authority of the Prime Minister.

The special programme of the President of the Republic for the most disadvantaged segments of the population includes the construction of mini dams, classrooms and health units in order to increase school enrolment, particularly girls' enrolment, and health coverage as well as enhance the distribution of dairy cattle and loans to women.

## IV. Difficulties encountered

The Niger, a vast country with limited resources, shares over 5,500 km of borders with seven countries — 1,500 km with Nigeria alone.

The country periodically faces severe food crises. Clearly, since it must dedicate its meagre resources primarily to addressing issues of survival, combating terrorism must necessarily be of a lower priority.

In addition to the lack of an appropriate framework, the effort to combat terrorism is hindered by the following:

- Inadequate resources: the defence and security forces are known to be less well equipped than terrorist groups, in terms of weaponry and communications equipment;
- Lack of human resources in terms of numbers and level of expertise;
- Inadequate resources for the National Committee on Terrorism;
- Lack of legal professionals (prosecutors and judges) specializing in counter-terrorism and inadequate training for law enforcement officers (Police, Gendarmerie, Customs and National Forces for Intervention and Security);
- The lack of certain essential services such as mine-clearing services and the lack of involvement of the population in counter-terrorism efforts;
- Poorly motivated defence and security forces officers (poor salaries);
- The high turnover of administrative staff trained in counter-terrorism matters.

Such factors hinder efforts to combat terrorism, which require considerable resources.

Terrorism being a complex offence, it requires specially trained law enforcement officials. All those involved, including magistrates, the police, the National Committee on Terrorism, the military and customs officials, must therefore be given enhanced training.

### (a) Human resources capacity-building

Recruitment of officers into the border control, defence, security, investigatory and law enforcement agencies.

Training of the relevant officials in the Niger and abroad (see Pan-Sahel Initiative).

**(b) Operational capacity-building**

Providing the defence and security forces, the army and customs service with substantial logistical support, appropriate means of communication and other resources.

Niamey, 4 February 2008